

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
MARCH 19, 2008**

**CALL TO  
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Marc Pitman, Randy Toavs, Mike Mower, Gordon Cross, Frank DeKort, and Jim Heim. Gene Dziza and Rita Hall had excused absences. Alex Hogle, Dianna Broadie and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 25 people in the audience.

**APPROVAL OF  
MINUTES**

No minutes were approved.

**PUBLIC  
COMMENT  
(not related to  
agenda items)**

Clara LaChapelle, 3580 Farm to Market Road, hoped the Board would take to heart the pledge of allegiance when it says justice for all. She said it is time for the citizens to have justice instead of just the builders and developers.

**PRELIMINARY  
PLAT/  
AMD PLAT LT 3  
MNT VIEW  
(FPP 07-37)  
CONTINUED**

A request by Dale and Cinnamon Hall, for Preliminary Plat approval of the Amended Plat of Lot 3, Mountain View Lot 13, Block 1, a 3 lot single-family residential subdivision on 2.375 acres. Lots in the subdivision are proposed to have public water and sewer systems. The property is located at 427 Maple Drive.

**STAFF REPORT**

Dianna Broadie reviewed Staff Report FPP 07-37 for the Board.

**BOARD  
QUESTIONS**

None.

**APPLICANT  
PRESENTATION**

Erica Wirtala, Sands Surveying, said she drew her map off of the 810-G map. She explained how the map worked and said there is no consideration in account for topography in the maps. The applicant will get a LOMA and determine the floodplain and if it impacts a building site and if there is no building area, the lot will just go away. If the conditions are not met then the lot will go away. She asked the Board to consider a variance for a 60 foot to 40 foot right away and 22 foot instead of 24 foot paved travel surface. She said it would match the configuration in the area.

<b>PUBLIC COMMENT</b>	None.
<b>APPLICANT REBUTTAL</b>	None.
<b>STAFF REBUTTAL</b>	None.
<b>BOARD DISCUSSION</b>	<p>Mower asked about the FEMA map versus the LOMA.</p> <p>Wirtala said if a LOMA is done it will go to the Floodplain Coordinator and to the State and the State approves the permit. There is no <i>versus</i> between FEMA and LOMA because they are two different things.</p> <p>Mower said the map line would be satisfactory for the subdivision.</p> <p>Wirtala said doing the LOMA will determine the line.</p> <p>Cross said the Staff Report only grants ½ of the variance.</p> <p>Broadie said the findings should remain the same and condition 10 and the condition for the approach permit are new.</p>
<b>MOTION TO ADOPT F.O.F.</b>	Pitman made a motion seconded by DeKort to adopt Staff Report FPP 07-37 as findings-of-fact.
<b>BOARD DISCUSSION</b>	None.
<b>ROLL CALL TO ADOPT F.O.F.</b>	On a roll call vote the motion passed unanimously.
<b>MOTION TO RECOMMEND APPROVAL</b>	Heim made a motion seconded by Pitman to recommend approve FPP 07-37 as conditioned.
<b>MAIN MOTION ROLL CALL TO APPROVE</b>	On a roll call vote the motion passed unanimously.

**TEXT  
AMENDMENT/  
FZTA 08-01**

A Zone Change request in the Blanchard Lake Zoning District by Den Gar Properties, LLC, Paul and Debbie Biolo and Brian Lauterbach, from AG-20 (Agricultural) to B-2 (General Business). The properties are located at 5015 Highway 93 South and 1985 Hodgeson Road and contain 12.656 acres.

**STAFF REPORT**

Jeff Harris reviewed Staff Report FZTA 08-01 for the Board.

**BOARD  
QUESTIONS**

Cross asked what the open cut mining act was.

Harris said the guidelines for permitting open cut mining includes all of the information required by the County plus some from the DEQ.

Cross asked if DEQ would approve a mining pit without a CUP.

Harris said no.

Pitman asked if there was a law stating the Growth Policy should be regulatory.

Harris said there is a provision saying the Growth Policy is essentially non-regulatory in nature unless there are regulations that make the Growth Policy regulatory.

**APPLICANT  
PRESENTATION**

None.

**PUBLIC  
COMMENT**

Roger Sullivan, see attached letter.

Clara LaChapelle, 3580 Farm to Market Road, lives 2/10 of a mile from a gravel pit. When the pit is in operation she can't open her windows. The crusher rattles her windows and all the wildlife has been lost because of the gravel pit. During the winter the Tutvedts did a road study during the storms so there was less traffic. She has seen 10 trucks run a stop sign in one day and one of the trucks put her daughter in the ditch. The dust and noise is horrendous. If a survey of West Valley residents would have been done, the CUP never would have been granted. The property value of all the homes has dropped drastically. There is no compliance officer to go the gravel pits to make sure the operators do what they are supposed to be doing. She said gravel pits run at all hours of the night and she has filed two reports against the Tutvedt gravel pit. She said it is not fair to the people in West Valley. The Planning Board is not doing the Valley justice.

Jerry Nix, 43 Sunrise Drive, used to be the chairman of the Long Range Planning Task Force (*LRPTF*). His largest concern is the preservation of Neighborhood Plans. The Planning Board has spent two years on elements of Neighborhood Plans and they are a huge process to complete. The plans take up to two years of public comment and a lot of involvement from the neighbors. He wants to see the plans have some regulatory nature. There wouldn't be much participation in the plans if the plans can't be regulated. The plans affect thousands of people and changing the provision would invalidate Neighborhood Plans. The plans are more restrictive than zoning. He recommended denial of the text amendment. He said the County needs more advertisement for such a large issue that will change so much. He was a member of the County's gravel pit advisory Board. The gravel pit industry has to have some certainty in regards to a procedure they have to follow. He discussed the supreme court ruling against the Tutvedt gravel pit. The County can't just pass the buck to DEQ.

Bill Breen, 335 Mountain Meadow Road, was one of the founders of the West Valley Plan. He wanted to stress the importance of giving the neighborhoods the ability to have a regulatory plan. He didn't approve of the text amendment. He said the text amendment needs a lot more study. It needs to incorporate some protection for Neighborhoods.

Bruce Young, helped create the Lakeside Neighborhood Plan. He was very concerned about the public issue of neighborhood plans. He said thousands of home owners invest money into their home and make neighborhood plans to find out what the neighborhood wants. The County supports plans but doesn't want them to mean anything. Citizens are tax payers and people need to be listened to. It is important that people be a part of the solution for their community. He asked for denial of the proposed text amendments.

Phillip Crissman, 645 5<sup>th</sup> Ave East, chairman of the LaBrant-Lindsey Lane Neighborhood Plan said it took a lot of work to get their plan into effect. The text amendment is critical to everyone. People have the right to gather together and define a Neighborhood Plan. They worked together to find out the common values of neighborhood and ninety percent of the neighbors approved the plan. They fought to have the plan. The proposed text amendment is not just a just a text change, it's capable of having profound effects on Neighborhood Plans. People will not want to participate in Neighborhood Plans if they are not regulatory. The Planning Board should bring together

representatives for Neighborhood Plans to help come up with some solutions. He said both of the text changes have the effect of reducing the empowerment of the citizens. He urged the Board to table the project.

Pat Arnone, chairperson of the East Valley Neighborhood Plan, said if the text amendments are approved, Neighborhood Plans are dead. No one will want to spend the time or money to create a Neighborhood Plan if it can't be regulatory. She asked the Planning Board to table the project.

Doug Morhouse, was a participant in the Helena Flats Neighborhood Plan. He said the text amendments would be disenfranchising a lot of citizens.

Megan, of Citizens for a Better Flathead, doesn't support the deletion of text amendments.

Janet Stern, Bitterroot Lane, agreed with all of the previous speakers. She said meaningful public comment requires meaningful notice and she had a hard time understanding what the meeting was about with the little notice that was given. She encouraged Staff and the Planning Board to make it easier for people to understand.

Tom Clark, agreed with Sullivan. He said if a Neighborhood Plan can't be a restrictive document it is not a plan, it is just an idea. All the Neighborhood Plans would fall apart if they weren't regulatory. He said the County should identify the gravel reserves in the Valley and find areas where there are no conflicts. Gravel zones should be created specifically for gravel extraction and if people chose to live there then it's their fault.

Bruce Tutvedt, 2335 West Valley Drive, said the text amendment is not gutting Neighborhood Plans. Any zoning in the plans will still be regulatory. The zoning stays and it is the only regulatory part of the Neighborhood Plan. The unregulatory part is the wordy part in the documents. State law says Neighborhood Plans are not regulatory except for the zoning portion.

Vanessa Cerarolo, 770 North Main Street, thanked the Board and citizens for their time. She agreed with Sullivan, Nix, and all of the people speaking in opposition to the text amendment. She said it is not a simple amendment. It will have profound impacts on the Valley and deserves more analysis. When the Montana Supreme Court speaks to Flathead County, the citizens need to

listen and study the issues. The County now has an obligation to come together and address the issues. A simple text amendment will not due.

Gary Krueger, said the Planning Board drafted the Growth Policy. The board knew in their heart that the Growth Policy was non-regulatory. By taking the text amendment out will be finishing the job of the Growth Policy.

Irene Vandehey, 644 Bald Rock Road, was against removing the text amendments. She said it would make Neighborhood Plans worthless.

Mark Schwager, said Neighborhood Plans are a democratic process. *See attached letter.*

**STAFF  
REBUTTAL**

Harris said he appreciated the quality of the comments received tonight.

**APPLICANT  
REBUTTAL**

None.

**BOARD  
DISCUSSION**

Toavs said the Planning Board was under the assumption that the Growth Policy was non-regulatory. He said everyone was trying to come to agreement on a guiding document, not a regulatory document. If the Growth Policy is truly a regulatory document it would have been done differently by the Planning Board. He has heard the Staff repeatedly tell the public that Neighborhood Plans are non regulatory. He didn't think the text amendment will affect new Neighborhood Plans because to this day everyone has been told the plans are non regulatory. He supported tabling the text amendment and work out a few other issues, but he didn't support denying the text amendment.

Harris said the Growth Policy is clearly intended to be non-regulatory. Harris said if the neighbor's planned on the documents being regulatory he didn't know that.

Toavs said it has no effect on the zoning currently in place.

Harris said the zoning reflects the intent and purpose of the Neighborhood Plan. There are a few Neighborhood Plans that don't have zoning in them. The zoning regulations only apply to zoned areas.

Pitman asked who has to request zoning.

Harris said it can be requested by the local government or by citizens.

Pitman asked how many Neighborhood Plans did not have zoning.

Harris said Helena Flats, Lakeside, and the Canyon Area.

Cross asked what the situation with the Canyon Plan was.

Harris said CALURS is unique in terms of how it is applied and procedure.

Pitman asked if the Board could get a matrix with all of the Neighborhood Plans and zoning in the area.

Cross wanted to wait for more information.

Heim said he understood that Neighborhood Plans are non-regulatory and apparently the supreme court decision said something that identified the two text amendments. If it is the Staff's intent to clear up the confusion, is that what the supreme court decision said.

Harris said the supreme court decision relied on the state statute that said the Growth Policy which includes Neighborhood Plans is non-regulatory unless you change the regulations to make it regulatory.

Pitman is all for zoning regulations being regulatory and Neighborhood Plans not being regulatory. He said there needs to be one concise document that tells people what the regulations are.

Harris said plans have never been regulatory and have only been guidance documents. He has been telling people for the past two years that the plans are not regulatory.

Toavs said just because they have a Neighborhood Plan doesn't mean the property has to be zoned.

DeKort said the new Growth Policy's purpose was to honor the integrity and purposes of the existing Neighborhood Plans. Most of the Neighborhood Plans were drafted before the Growth Policy came into effect. Throwing the sections of the text amendments out won't solve the problems. He would like to table the text amendment and come up with a solution in the future.



**MOTION TO  
TABLE**

Cross made a motion seconded by DeKort to table the text amendments until June 18, 2008.

**ROLL CALL TO  
TABLE**

On a roll call vote the motion passed 5-7 with Toavs and Hickey-AuClaire dissenting.

**ZONE CHANGE/  
BLANCHARD  
LAKE ZONING  
DISTRICT  
(FZC 07-14)**

A request by Dan Gullotta for Preliminary Plat approval of Marco Heights 2, a 7 (4 single-family residential and 3 commercial) lot subdivision on 4.02 acres. Lots in the subdivision are proposed to have multiple-user water and public sewer systems. The property is located at 77 Deer Creek Road.

**STAFF REPORT**

Alex Hogle reviewed Staff Report FZC 07-14 for the Board.

**BOARD  
QUESTIONS**

DeKort asked when the zoning district was initiated.

Hogle said 1993.

Pitman asked what the consequences for not correcting the zoning would be.

Hogle outlined in his Staff Report what a non conforming property could do.

Toavs asked if they could add on to the non conforming property.

Hogle said the structures themselves conform to the requirements, but the uses are non-conforming. A non-conforming building or structure can be altered if it will completely conform to the regulations. A non-conforming use can be expanded subject to a CUP.

Heim asked if the current property owner was there when it was zoned.

Hogle said Biolo was there.

**APPLICANT  
PRESENTATION**

Erica Wirtala, Sands Surveying started with a PowerPoint presentation. She said item F of the Staff Report states there could be about 50 lots and that is a rough guess for the possible build out. She said the property would take a significant amount of fill to build on because of the topography. There is no maximum lot coverage, but B2 zoning has a significant amount of parking regulations. There would need to be one parking spot for every 300 square feet. She discussed what buildings and uses were in the area. The buildings meet the zoning, but the actual

lot sizes are significantly smaller. She said spot zoning needs to be taken up in court, not at the Planning Board level.

Brian Lauterbach, supported what Wirtala said about the properties. As a prior business owner, he pointed out some benefits of the zone change. He said Happy Valley is a thriving community and businesses would be supported there.

Debbie Biolo, has owned and operated Midway motors for 12 years. She went over what she put in the file for the zone change. She recently had some real estate work done on her property and that is why there was CAMA data in the file. The CAMA data said her property was commercial, not agricultural. The property also has a commercial designation for taxes. She was told to wait to apply for the zone change because the jurisdiction was shared with Whitefish. She got different information every time she talked to a different Staff member. She was then told to wait until the Growth Policy was passed. She approached the Board more than once during the Growth Policy because of the inconsistencies and asked the Commissioners if the zone change could be looked at as part of the Growth Policy. She is concerned with leaving the property non-conforming because if something happened to her husband she would have to close the business. She would lose that commercial use to the property and then end up with 3.7 acres of AG, that really isn't AG, and that no one would buy. She handed out a letter to the Board. A lot of people asked if they wanted to lease land to them, but the County would always tell her why that isn't possible with a non-conforming use.

Ole Nettenburg supported the zone change and previous speakers.

**PUBLIC  
COMMENT**

None.

**STAFF  
REBUTTAL**

Hogle said this has been an interesting and challenging review. He felt Wirtala led to a very quick dismissal of spot zoning. He said spot zoning isn't necessarily an item for the court. He was not making a claim that it is spot zoning, but it's worth thinking about specifically. There is a 3 point test for spot zoning. He went over the test and discussed spot zoning. He discussed signs on the property.

**APPLICANT  
REBUTTAL**

Wirtala said the area does not have a Neighborhood Plan. There is an element of risk every time someone pays for a zone change. The Growth Policy that Hogle was discussing regarding urban services to commercial areas is a non-regulatory document. The most appropriate use of the land through out the jurisdiction is commercial.

**BOARD  
DISCUSSION**

None.

**MOTION TO  
ADOPT ACCEPT  
CRITERIA**

Toavs made a motion seconded by AuClaire to adopt the criteria for the zone change as amended.

**BOARD  
DISCUSSION**

Au-Claire said there are uses for an AG-40 not an AG-20.

Toavs said any issues would be brought up at the time of subdivision review.

Cross said the problem is this particular zone designation allows for high density development.

Mower said you could easily get 5 or 6 more businesses.

**MOTION TO  
AMEND THE  
CRITERIA**

Toavs made a motion seconded by Hickey-AuClaire to amend Evaluation Criteria #1 on page 5 of the report by deleting the cites to Growth Policy policies 22.1 and 28.1 in reference to non-compliance with the master plan.

**ROLL CALL TO  
AMEND THE  
CRITERIA**

On a roll call vote the motion passed 4-3 with Mower, Cross and DeKort dissenting.

- ROLL CALL TO ADOPT THE CRITERIA** On a roll call vote the motion passed 6-1 with Mower dissenting.
- MOTION TO APPROVE** Toavs made a motion seconded by Heim to approve FZC 07-14.
- ROLL CALL TO APPROVE** On a roll call vote the motion passed 5-2 with Cross and Mower dissenting.
- OLB BUSINESS** Drew gave an update on the North Fork Neighborhood Plan.
- The Board discussion the luncheon with the Commissioners and the retreat.
- Cross discussed the CTEP case court case.
- MOTION TO RECOMMEND APPROVAL OF NF PLAN** Pitman made a motion seconded by DeKort to recommend approval of the North Fork Neighborhood Plan.
- BOARD DISCUSSION** The Board discussed how well the workshop went and said it was the most productive workshop they have had.
- ROLL CALL TO RECOMMEND APPROVAL** On a roll call vote the motion passed unanimously.
- NEW BUSINESS** Dziza suggested amending the bylaws to state the meetings will end at 11:00 pm every night.
- Harris said the item can be put on the next agenda.
- ADJOURNMENT** The meeting was adjourned at approximately 10:55 p.m. on a motion by Mower seconded by Hickey Au Claire. The next meeting will be held at 6:00 p.m. on March 26, 2008.

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Gordon Cross, President

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Kayla Kile, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 4/16/08